

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**NICHOLAS DeFOSSETT,**  
**Plaintiff**

**v.**

**CPRK-II, L.P. d/b/a BROOK  
HOLLOW SHOPPING CENTER,**  
**Defendant**

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**CIVIL ACTION NO. 5:21-cv-226-RBF**

**AGREED MOTION TO ACCEPT CONSENT DECREE**

NOW COME, Plaintiff **NICHOLAS DEFOSSETT** and Defendant **CPRK-II, LIMITED PARTNERSHIP** and file this Agreed Motion to Accept Consent Decree and in support thereof shows the Court as follows:

**I. CONSENT DECREE**

1. On May 24, 2021, the Parties entered into a Consent Decree that sets forth the terms of the Agreement between the Parties. The Consent Decree is attached hereto as Exhibit 1.

2. Exhibit A to the Consent Decree contains a list of renovations that will be made to the Restaurant in order for the Restaurant to comply with the 2010 ADAAG Standards.

3. Exhibit B to the Consent Decree contains a list of renovations and standards that Defendant asserts are not readily achievable as such is defined in 42 U.S.C. § 12181(9) and as interpreted and applied in common law.

4. The Parties have conferred and come to agreement regarding the renovations to be made by Defendant as stated in Exhibit A and the renovations and standards that are not readily achievable as stated in Exhibit B.

5. The Property was the subject of a similar lawsuit in 2009, that was dismissed in 2011, being Cause No. 5:09-cv-1017-XR, *James Lawson v. CPRK-II, Limited*

*Partnership*, in the Western District of Texas, San Antonio Division (the “2009 Lawsuit”). The Settlement Agreement in the 2009 Lawsuit required the property owner Defendant, being the same property owner Defendant as in the present case, to make certain modifications to the Property. It is agreed that Defendant complied with the terms of that Settlement Agreement and that, as such, the parking lot and walkway areas of the Property are deemed to comply with the ADA.

## **II. MOTION TO ACCEPT**

6. The Parties move that the Court accept the Consent Decree and in regard thereto enter findings of facts and conclusions of law that the renovations, modifications, and standards stated in Exhibit B to the Consent Decree are not readily achievable by this Defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiff NICHOLAS DEFOSSETT and Defendant CPRK-II, LIMITED PARTNERSHIP pray that the Court accept the Consent Decree and take further action as requested herein to memorialize the Consent Decree and its exhibits. The Parties pray for all other relief either or both made be entitled to at law or in equity.

Respectfully submitted,

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By: /s/ Dennis R. Kurz w/ permission  
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ATTORNEY FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I do hereby certify that the foregoing pleading has been forwarded in accordance with the Federal Rules of Civil Procedure to all parties of record as set out below on this the 24th day of May 2021.

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/s/ Michael D. DeNuccio  
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